IN THE HIGH COURT OF BOMBAY AT GOA

WRIT PETITION NO. 9 OF 2007

MR. HARMOHAN SINGH CHANDHOK ....Petitioner

Versus

MR. ROLLAND LIANO AUGUSTIN REMEDIOS AND ANR ....Respondents

Mr. A. D. Bhobe, Advocate for the petitioner.

Mr. J. E. Coelho, Senior Advocate with Mr. V. Braganza, Advocate for the respondents.

Coram:- S.K. SHAH, J.

Date:- 2nd March, 2007

P.C.

Heard Counsel on both sides. By this writ petition, the petitioner has challenged the order passed by the trial Court on 15/09/06, which is as under :

> "Considering this fact, the plaintiffs (defts. in c.c.) are directed to pay the remaining balance amount of compensation within 5 days from today failing which the defence of the plaintiffs (defendants in cc) stands automatically struck off as it will amount to dis-obediences of earlier orders of this court without any reason. The reason given by the (defendants in cc) plaintiffs in their reply is not accepted and plaintiffs to comply Orders of this court."

This order is challenged on the ground that it has an effect of automatically striking off the defence on failure to deposit the balance

amount which is Rs.3,00,000/-. However, this order is in contravention of the provision of Order XV-A(2) of C.P.C., whereunder an order of striking off the defence is required to be specifically passed after serving notice to show cause as to why such action should not be taken. As such, the order cannot be sustained and is, therefore, set aside to the extent of "automatically striking off defence on failure to deposit the remaining balance amount of compensation within five days". As the amount is not paid, the Court is expected to issue show cause notice as contemplated under Order XV-A(2) of C.P.C. and it is after hearing the parties, a suitable order may be passed thereunder.

There is a contention raised on behalf of the petitioner that the petitioner is entitled to deduct the T.D.S. to be paid on the compensation. This aspect shall be considered by the trial Court, if raised before it. The writ petition stands disposed of in terms of the aforesaid observations.

S.K. SHAH, J.

ssm.